

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

William L. Marder, Esq. (State Bar No. 170131)
POLARIS LAW GROUP LLP
501 San Benito Street, Suite 200
Hollister, CA 95023
Tel: (831) 531-4214
Fax: (831) 634-0333
bill@polarislawgroup.com

Attorneys for Plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

HERMIE EVANGELISTA, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

LINDE INC.; and DOES 1 through 50,
inclusive,

Defendant.

Case No.: 22STCV26341

**[PROPOSED] ORDER AND FINAL
JUDGMENT GRANTING PLAINTIFF'S
MOTION FOR FINAL APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT;**

Date: September 3, 2024

Time: 10:00 a.m.

Dept.: 7

Complaint Filed: August 15, 2022

1 This matter for an order granting final approval of the settlement set forth in the
2 Amended Joint Stipulation of Class and Representative Action Settlement (“Agreement” or
3 “Settlement Agreement”), and due and adequate notice having been given to the Class Members
4 as required in the Preliminary Approval Order, and the Court having considered all papers filed
5 and proceedings had herein and otherwise being fully informed of the premises and good cause
6 appearing therefor, it is

7 ORDERED, ADJUDGED AND DECREED THAT:

8 1. Plaintiff Hermie Evangelista’s (“Plaintiff” or the “Class Representative”) Motion
9 for Final Approval of Class and Representative Action Settlement is hereby granted. All terms
10 used herein shall have the same meaning as defined in the Settlement Agreement.

11 2. This Court has jurisdiction over the subject matter of this litigation and over all
12 parties to this litigation, including Plaintiff and Defendant Linde Inc. (“Defendant”), all
13 Settlement Class Members and Aggrieved Employees.

14 3. Distribution of the Notice directed to the Class Members as set forth in the
15 Settlement Agreement and the other matters set forth therein has been completed in conformity
16 with the Preliminary Approval Order, including individual notice to all Class Members who
17 could be identified through reasonable effort, and was the best notice practicable under the
18 circumstances. This Notice provided due and adequate notice of the proceedings and of the
19 matters set forth therein, including the proposed settlement set forth in the Settlement
20 Agreement, to all persons entitled to such Notice, and the Notice fully satisfied the requirements
21 of due process. No Class Members objected to the Settlement Agreement. One (1) Class
22 Member submitted a valid request for exclusion.

23 4. This Court hereby approves the settlement set forth in the Settlement Agreement
24 and finds that the Settlement is in all respects fair, adequate and reasonable, and directs the
25 Parties to effectuate the Settlement according to its terms. The Court finds that the Settlement
26 has been reached as a result of intensive, serious and non-collusive arms-length negotiations.
27 The Court further finds that the Parties have conducted extensive and costly investigation and
28 research and counsel for the Parties are able to reasonably evaluate their respective positions.

1 The Court also finds that settlement at this time will avoid additional substantial costs, as well as
2 avoid the delay and risks that would be presented by the further prosecution of the Action. The
3 Court has reviewed the monetary recovery that is being granted as part of the settlement and
4 recognizes the significant value to the Settlement Class and to the Aggrieved Employees of that
5 monetary recovery. The Court finds that the Class is properly certified as a class for settlement
6 purposes only.

7 5. For purposes of this Judgment, the term “Class” means: (i) all employees who are
8 or previously were employed as commercial truck drivers by Defendant in California during the
9 period of August 15, 2018 through June 25, 2023 (“Expense Reimbursement Class”); and (ii) all
10 employees who are or previously were employed as commercial truck drivers by Defendant in
11 California and received “sleeper miles” pay during the period of August 15, 2021 through
12 January 19, 2024 (“Wage Statement Class”).

13 6. The term “Aggrieved Employees” means “all employees who are or previously
14 were employed as commercial truck drivers by Defendant in California during the period of
15 August 10, 2021 through January 19, 2024.”

16 7. The term “Settlement Class Member” means a Class Member who has not timely
17 and validly requested exclusion from the Settlement. Michael S. Bruneau submitted a valid
18 request for exclusion and therefore is not a Settlement Class Member.

19 8. Upon the payment of the Gross Settlement Amount, Plaintiff and all Expense
20 Reimbursement Settlement Class Members release Defendant, all of its parents, subsidiaries,
21 affiliates, shareholders, agents, predecessors, successors, and assigns, from all claims, rights,
22 demands, liabilities, and causes of action, whether statutory, in tort, contract or otherwise,
23 alleged in the Action and PAGA Notice, or that could have been alleged based on the facts
24 pleaded in the Action and PAGA Notice, arising during the Expense Reimbursement Class
25 Period (August 15, 2018 through June 25, 2023), including claims under the California Labor
26 Code, California Industrial Welfare Commission Wage Orders, regulations, and/or other
27 provisions of law, for failure to reimburse business expenses and unfair competition, including
28 Labor Code section 2802 and California Business and Professions Code section 17200, *et seq.*

1 related to the above claims. The Released Expense Reimbursement Claims include any related
2 claims, rights, demands, liabilities, damages, wages, benefits, expenses, penalties, debts,
3 obligations, attorneys' fees, costs, any other form of relief or remedy in law, equity, or whatever
4 kind or nature and causes of action, that could potentially arise from the receipt of any monies as
5 a result of this Settlement by any member of the Expense Reimbursement Class Period.

6 9. Upon the payment of the Gross Settlement Amount, Plaintiff and all Wage
7 Statement Settlement Class Members release Defendant, all of its parents, subsidiaries,
8 affiliates, shareholders, agents, predecessors, successors, and assigns, from all claims, rights,
9 demands, liabilities, and causes of action, alleged in the Action and PAGA Notice, or that could
10 have been alleged based on the facts pleaded in the Action and PAGA Notice, arising during the
11 Wage Statement Class Period (August 15, 2021 through January 19, 2024), including claims
12 under the California Labor Code, California Industrial Welfare Commission Wage Orders,
13 regulations, and/or other provisions of law, for failure to provide accurate wage statements,
14 including Labor Code sections 226, 226(a). The Released Wage Statement Claims include any
15 related claims, rights, demands, liabilities, damages, wages, benefits, expenses, penalties, debts,
16 obligations, attorneys' fees, costs, any other form of relief or remedy in law, equity, or whatever
17 kind or nature, and causes of action, that could potentially arise from the receipt of any monies as
18 a result of this Settlement by any member of the Class.

19 10. Upon the payment of the Gross Settlement Amount, Plaintiffs and all Aggrieved
20 Employees release all claims, rights, demands, liabilities and causes of action, whether in law or
21 equity, under the Private Attorneys General Act ("PAGA"), arising from the same facts and/or
22 claims alleged against Defendant in the Action and the PAGA Notice, that were pled or that
23 could have been pled, and arising during the PAGA Period (August 10, 2021 through January 19,
24 2024) including PAGA civil penalties for failure to provide accurate wage statements and failure
25 to reimburse business expenses, including Labor Code sections 226, 226(a), 2802 and 2698 et
26 seq. In light of the binding nature of a PAGA judgment on non-party employees pursuant to
27 *Arias v. Superior Ct. (Daily)* (2009) 46 Cal. 4th 969, Aggrieved Employees who exclude
28

1 themselves from the settlement of class claims shall still receive an individual PAGA payment
2 and be subject to this PAGA Release.

3 11. Defendant shall deposit the Gross Settlement Amount of \$115,000.00 with the
4 Settlement Administrator, pursuant to the terms of the Settlement Agreement. From the Gross
5 Settlement Amount, the Court hereby awards the following:

6 a. Class Counsel attorneys' Attorneys' Fees and Costs in the amount of
7 \$38,333.33 and reimbursement of costs in the amount of \$11,302.56.

8 Except as otherwise provided in the Settlement Agreement, the Parties are
9 to bear their own costs and attorneys' fees;

10 b. Service Award in the amount of \$5,000 to the Class Representative;

11 c. Payment to the LWDA in the amount of \$7,500.00 and payment to
12 Aggrieved Employees in the amount of \$2,500; and

13 d. Payment of claims administration expenses in the amount of 8,250.00 to
14 Phoenix Settlement Administrators.

15 The Court finds that these amounts are fair and reasonable. The Settlement Administrator is
16 directed to make such payments in accordance with the terms of the Settlement Agreement.

17 12. The Court approves the Individual Settlement Payment and Individual PAGA
18 Payment amounts, which shall be distributed by the Settlement Administrator pursuant to the
19 terms of the Settlement Agreement. Any checks issued by the Settlement Administrator will be
20 negotiable for one hundred and eighty (180) calendar days after the postmarked date of their
21 initial mailing. All uncashed or undeliverable settlement checks will expire after one hundred
22 and eighty (180) calendar days. Those funds represented by settlement checks returned as
23 undeliverable and those settlement checks remaining un-cashed for more than one hundred and
24 eighty (180) calendar days after issuance shall be paid to the California State Controller's Office
25 — Unclaimed Property Fund, to be held in the name of the Aggrieved Employees and/or
26 Settlement Class Members who did not cash their checks.

27 13. Neither the Agreement nor this Final Order and Judgment shall constitute, in this
28 or any other proceeding, an admission of any kind by Defendant, including without limitation,

1 that certification of a class for trial or any other purpose is appropriate or proper or that Plaintiff
2 or any Class Member can establish any of the requisite elements for class treatment of any of the
3 claims in this Action. Defendant does not admit, and specifically denies, that it has violated any
4 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any
5 statute or any other applicable laws, regulations, or legal requirements; breached any contract;
6 violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any
7 other unlawful conduct with respect to its employees. Neither this Agreement, nor any of its
8 terms or provisions, nor any of the negotiations connected with it, nor this Final Order and
9 Judgment shall be construed as an admission or concession by Defendant of any such violations
10 or failures to comply with any applicable law, regulation, or legal requirement. The Parties
11 further agree that this Agreement or any documents or orders issued related to this Settlement
12 will not be admissible, other than according to the Settlement's terms, in this or any other
13 proceeding as evidence that either: (i) a class action should be certified, or (ii) Defendant is liable
14 to Plaintiff or any Class Member.

15 14. Judgment in this matter is entered in accordance with the terms of the Settlement
16 Agreement, the Court's Preliminary Approval Order, and this Final Approval Order against
17 Defendant in favor of Plaintiffs and the Class Members. This document shall constitute a
18 Judgment for purposes of California Rule of Court 3.769(h). This Judgment is intended to be a
19 final disposition of the above-captioned action in its entirety.

20 15. Plaintiff is directed to submit a copy of this Order to the LWDA within ten (10)
21 days of the date of this Order.

22 16. Without affecting the finality of this Final Judgment in any way, this Court hereby
23 retains continuing jurisdiction with respect to all matters related to the interpretation,
24 implementation, and enforcement of the Settlement Agreement and all orders and judgments
25 entered in connection therewith, as well as and any and all claims, asserted in, arising out of, or
26 related to the subject matter of the Action, including but not limited to all matters related to the
27 Settlement and the determination of all controversies relating thereto.
28

17. A final accounting hearing is hereby set for _____, in Department 7. On or before _____, Class Counsel or the Settlement Administrator will submit a report to the Court regarding distribution of the settlement funds.

DATED: _____

HON. HONORABLE LAWRENCE P. RIFF
SUPERIOR COURT OF CALIFORNIA